



**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON FAMILY AND HUMAN SERVICES
INQUIRY INTO WORK AND FAMILY BALANCE**

Introduction

- 1.1 Over the past decade or so, survey after survey has pointed to a deterioration in the ability of many Australians to reconcile their family commitments with their paid employment. Long hours of work for many means that there is too much work and too little time for family. In most households with dependent children all the adults are in paid work, and there has been a rise in families where all adults work full time. At the same time, a growing number of children are growing up in jobless or households, or families where there is not enough work. For those families there is insufficient work.
- 1.2 Participation in paid employment is the most important source of economic security and opportunity for Australian families. While an ageing population creates pressures to foster workforce participation by individuals with primary caring responsibilities, who represent an untapped source of labour, the primary reason to assist individuals manage paid work and caring is to break down the strong association between caring, especially being a primary carer and joblessness.
- 1.3 Where caring responsibilities necessitate longer term withdrawal from employment, there must be income security for those temporarily out of employment while they undertake care. At a minimum income protection for those out of paid employment must include paid maternity leave, and adequate parenting and carers payments. But more needs to be done to facilitate the transitions back to employment, and by supporting those who are both carers and in paid employment in both their caring and paid work roles.
- 1.4 Training and other labour market programs addressing re-entry to work, and workplace policies which promote a gradual return to work (including extended parental leave, quality part time work and employee initiated hours flexibility) will facilitate the transition back to work after a temporary withdrawal from paid employment.

- 1.5 In those families who are combining paid work and caring, particularly full time paid work, there is associated time pressure, stress, and dissatisfaction with work/family balance. (Glezer and Woolcott 1999, Peetz et al 2004, Millward 2002). Children bear the brunt as parental stress is associated with poorer outcomes, and for some lack of quality childcare is a risk factor. (Mc Cain and Mustard 1999, A Head Start for Australia 2003). And as a community we risk an under supply of carers as individuals' work obligations take precedence over their caring work (AIHW 2003).
- 1.6 The ongoing management of routine care by those in paid work will be assisted by reliable, affordable alternative care, employee initiated flexibility over hours of work, and leave to deal with both unexpected and planned family exigencies.
- 1.7 In 2003 ACTU made application to the AIRC to amend award-based parental leave, and to provide for a right to request flexible hours of work and up to 6 weeks unpaid leave for caring purposes. The case was heard (along with other applications in a test case known as the Work and Family Test Case) throughout 2004. At the time of writing the outcome of the case is unknown. The claims we made in that case are re-iterated in the final section of this submission as they constitute what we believe are a fair minimum set of working arrangements that will assist employees avoid the worst of the work-life collision.

Background to the current work and family debate

- 1.8 Factors that are contributing to the number of Australians who experience difficulty meeting their work and family commitments are:
- Increased labour force participation by women, particularly women who are also carers. This is particularly evident in the trend for mothers of very young children to be in paid work, and for primary care-givers to the disabled to be employed;
 - The growth of sole parent families and dual income families;

- A rise the numbers of, and proportion of the population who are disabled and dependent upon family for care, coupled with de-institutionalisation of care for the disabled,
- A crisis in the provision of child care; and
- Changes in the organisation of work that are antithetical to meeting caring needs.

1.9 There is no doubt that employees have born the brunt of this, with increased stress, and dissatisfaction with work/family balance. (Glezer and Wollcott 1999, Peetz et el 2004, Pocock 2003). Glezer and Wolcott’s study strongly suggested that when work and family collide the impact is felt in the home, and not in the workplace.

1.10 A range of policy settings affect work and family:

“Work and family decisions are made in the context of a broad set of interacting factors including opportunities and preferences, family formation, parenthood, caring and inter-generational care arrangements, education, and work and earning opportunities later in life, and retirement prospects. This is not a review of, for example, health and elderly care policies, education or retirement policies, but clearly such policies affect opportunities that influence “current” work and family decisions. Similarly, employment, gender equity, childcare and income policies impinge on the existing work and family life balance and thus effect both work and family life decisions, including family formation, parenthood, family dissolution.” (OECD 2003, page 40)

1.11 The ACTU submission focuses on only three of these: income security; the availability of early childhood education and care; and workplace flexibility. Clearly others are important.

1.12 The ACTU holds grave concerns for the capacity of the community to continue to provide the lions share of care of older Australians, and people with

disabilities. There are 3.6 million disabled people living in our community. A further 3.1 million have some impairment that doesn't affect their functioning. The number of people with a profound or severe disability doubled between 1981 and 1998, and the rates will only increase.

- 1.13 Thirty years of policies of de-institutionalisation of care means that these Australians live with their families, and in the community. Only three percent of the severely disabled rely solely on formal care. The other ninety seven percent are cared for by an estimated 2.5 million Australians, and 62 per cent of these, or one and a quarter million people are in paid work.
- 1.14 In 1998 there were 2.3 million Australians who provided ongoing care (more than 6 months) to another person due to that persons disability or age. The Australian Institute of Health and Welfare ("the AIHW") suggests 11 per cent of full time and 16 per cent of part time employees provide care to an alder or disabled relative, and more than half of these carers are women. In addition over a third of employed women have responsibility for a dependent child. Data from Queensland (ABS 2002, Cat 4903.3) suggests 47 per cent of employees provide care for another person.
- 1.15 The AIHW has attempted to model the future supply of carers. (AIHW 2003) The model predicts that, in the absence of a decline in the propensity to care (which they suggest may arise from higher female participation rates) the ratio of carers to dependents will remain static or decline over the coming two decades. However their model assumed that a large cohort of older women will leave the workforce in the coming decades and be available to take on the caring role. Initiatives designed to keep the baby boomers in paid work potentially undermine this assumption.
- 1.16 This submission concentrates on three areas where government could and should assist employees reconcile their work and family commitments.
- 1.17 In the ACTU's Work and Family Test Case before the Australian Industrial Relations Commission in September 2004 Professor Peter McDonald of the

ANU gave evidence that, to be effective work and family policies needed to be comprehensive across the three areas of income security, early childhood education and care, and workplace conditions. He went on to indicate that as well as addressing each of these areas, policies must be society wide and must be long term. He said:

... So in the end you need policies that are society-wide, that is, they are available to everybody, not that this person gets it and that person doesn't. They need to be society-wide; they need to be comprehensive across those three areas that I talked about before; they need to be long term, not seen as something which is there just for the moment and is going to disappear in a year or two years' time. They are the three kind of characteristics that come out of the literature as important in regard to policy that will affect fertility.¹

- 1.18 Unfortunately for Australian families, the government has thus far failed to meet these tests. Despite changes in the 2004 budget, the withdrawal of benefits create an effective marginal tax rate discourage the transition back to work for low income parents returning to work after a period caring for young children. The family payments system provides payments to some high-income families with children older teenage children while the government announces it will impose work obligations on low-income parents of 5 year-old prep children. Child-care is in crisis. Parents cannot get care for children under two, yet their jobs are held open for only 12 months after the birth of a child. There are shortages of outside school hours care. And the government has adopted a hands-off approach to workplace conditions which guarantees that family-friendly work practices are denied to employees with little or no bargaining power.

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¹ Transcript of Proceedings, Family Provisions Case, AIRC 3 September 2004, PN2619.

2 Why address Work and Family policy?

2.1 There is considerable public interest in achieving the right work and family reconciliation measures. While the spotlight is currently upon our ageing population the OCED lists others: increased aggregate labour supply and employment so increasing national income, families with more stable and secure sources of income, families better able to stand the strains of modern life, higher fertility, less public expenditure, better childhood, better child development outcomes, and gender equity. (OCED 2003).

Increasing labour force participation

2.2 Effective work and family reconciliation measures are not only socially important. Structural ageing of the population does pose a significant challenge for labour supply in this country. When women and men are better able to combine paid work with caring work, this will remove barriers to labour market participation amongst the working age population that is currently under-represented in the workforce. This has the potential to increase aggregate labour supply, and hence employment and national incomes, and alleviate fiscal pressure.

2.3 Workers with family responsibilities are a significant untapped labour supply available in Australia. While Australia's labour force participation rates for women are within the OECD range, maternal employment rates are low by OECD standards. (OECD 2002).

2.4 In 2003, when women outside the labour force and those in part time employment are counted, Austen and Giles found that women in the prime age groups make up about 25 per cent of the potential untapped labour supply in Australia. This can be compared to older workers who make up about 10 per cent of the untapped labour supply. (Austen and Giles 2003).

- 2.5 A report of the House of Representatives Standing Committee on Employment, Workplace Relations and Workplace Participation, *Working for Australia's Future; Increasing participation in the workforce*, discussed this evidence. From the report (page 35) it appears that DEWR challenged this evidence, and suggested to that committee that women who are marginally attached to the labour force were likely to be only available for part time hours of work. But DEWR's argument understates the extent to which part time employment is a temporary phenomenon for mothers, who tend to move increase their hours in employment as their children reach the teenage years. Thus assisting mothers maintain their labour market attachment is a sound investment in their longer term participation.
- 2.6 The potential is not insignificant. Alternative forecasts by Treasury staff indicates that if Australia can lift its labour force participation rate to something closer to the 80 percentile of the OECD averages, then we may prevent the demographic predictions becoming our demographic fate; that we can lift output and we can help ameliorate some of the fiscal strain that an ageing population places, particularly on the health budget. (Gruen and Garbutt 2003)

Addressing fertility and family formation.

- 2.7 Australia's fertility rate has declined over the last part of the 20th century, from a high of 3.48 babies per woman in 1960, down to 1.70 in at the beginning of this century. Although Australia's population is not static or declining, our declining fertility rate is one cause of an ageing population (the other being longer life expectancy). These two phenomena produce an imbalance between the working age and dependant populations. With a population growing at around 1.2 percent per annum Australia's rate of population growth is equal to the whole world average, and above most OECD nations. But between 1947 and 1999 average male life expectancy increased from 66.67 years to 76.22 years, and average female life expectancy increased from 70.65 years to 81.77 years. And since the post war baby boom Australia's Total Fertility Rate declined steadily from a high in 1961 (of 3.55 babies per woman) to below replacement level in 1976, then fell less sharply to 1.936 in

1982. There is evidence that the Total Fertility Rate is continuing to decline. In the 10 years between 1992 and 2002 the rate fell from 1.89 to 1.74, and has hovered around that figure.

- 2.8 The determinants of fertility are no doubt complex, but there is evidence that job security is a significant factor that affects the decisions Australians make about whether and when to have a child or have more children.
- 2.9 In 2004 the AIFS conducted a study on behalf of the Office for Women and DFACS. The *Fertility Decision – Making Project* study consisted of interviews with 3201 men and women aged 20-39 years. Both men and women rated the ability to provide financial support for a child the highest, followed by the ability to provide parenting support to the child. The male partner's job security was as important to women as whether they would be a good parent and much more important than relationship security. Contrary to some expectations, the so-called "selfish" factors relating to time for career, stress on relationships and foregone social/leisure time or major purchases were least important. (AIFS 2005).
- 2.10 Mc Donald also argues that income security is important for fertility. This was evident during cross-examination in the 2004 Work and Family Test Case hearings before the AIRC, where he said:
- 2.11 *--Yes, employment, particularly a kind of security of employment I think, are - is what I have in mind there. First of all the creation of employment itself, that there are jobs available for young people. That is, as I say, less the case in Australia but in Australia I think it is important that young people facing decisions about future family formation have some sense about the security of their employment; that that is the risk aversion argument. That if they are on a three month contract, you know, rolling three month contract, that is not going to - that is not great business for deciding upon having a family in the future unless they have real confidence in their own human capital, that three*

*months is okay, I will get another job after that, and so on. So that - and hence people's investment in human capital and, hence, the delay.*²

- 2.12 Income security and job security are therefore directly relevant to Australian's decisions to have children. In Australia over the past 15 years there has been strong growth in insecure work, be that casual employment or dependent contracting arrangements. 60 per cent of part time and 14 per cent of full time jobs are casual. There are over 800,000 independent contractors and 230,000 people working in the labour hire jobs. Casual employees have less predictable start and finish times, and less say over their hours of work than permanent employees. (ABS 2003 Working Arrangements Survey). The association between part time work and insecure casual employment is not conducive to having or growing a family and it should be no surprise that declining security has accompanied declining fertility rates.
- 2.13 If the government's priority is to enable people to have their desired number of children, the growth in precarious employment should be curtailed.

2.14 The ACTU believes that the need of workers for secure and predictable employment with decent entitlements can be achieved without compromising the reasonable requirements of employers for flexibility to deal with genuine operational fluctuations. The *Workplace Relations Act* should clearly ensure the capacity of the AIRC to make awards to ensure the appropriate use of casual and insecure forms of employment.

2.15 The proposed *Independent Contractors Act* should ensure that employees of labour hire companies, dependent contractors, and home-based outworkers are covered by appropriate awards and are generally subject to the jurisdiction of the Commission, together with increased resourcing of enforcement agencies to ensure that these workers receive all their legal entitlements.

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² Transcript of Proceedings, family Provisions Case, AIRC, 3 September 2004, PN2614

2.16 The Government should develop, in consultation with stakeholders, a code of practice governing contracting out and use of labour hire.

2.17 In addition to job security, evidence suggests the key to addressing lower fertility levels is making it easier for women to continue to work while having and raising children.

2.18 While it might be thought that policies that support traditional “breadwinner” families will encourage more births, cross national comparisons suggest that the traditional link between high fertility and policies strongly supportive of traditional families is no longer true. (Castles 2002). The comparisons indicate that there is a relationship between higher levels of female employment and higher fertility. Fertility is highest in those nations where women’s labour force participation is greatest, and where family formation and breakdown is furthest from the traditional pattern. Castles argues that when women have strong economic and social commitment to employment, then policies that assist them both work and raise a family will have greater success in promoting fertility than policies aimed at labour force withdrawal.

2.19 Twenty–five years ago, high fertility was associated in cross national comparisons with religious adherence, low divorce rates, smaller service sectors, lower levels of female employment, education, labour force participation, and higher female unemployment. By 1998 all those relationships had reversed. Castles attributes this to women’s control over their fertility. Where women wish to work the trade-off issues they must consider involve the possibility, practicability and timing of combining work and family.

2.20 McDonald (2001) notes that in most western nations women about the same proportion of women (20-25 percent) have no children. The difference between very low and tolerably low fertility Western nations is the rate at which later starters compensate for their late start by having second and subsequent children.

- 2.21 It appears that, given continued access to education and control over their fertility, women will limit the size of their families. And Mc Donald argues that the labour market disadvantages associated with parenting mean women will delay having children until they have established their foothold in the labour market. Given these two trends, making it easy to combine having second and subsequent children with continued employment is the key to improving fertility levels.
- 2.22 How is this best done? In respect to workplace measures, not all family-friendly measures are equal. In the cross national studies Castles found that childcare for children under three years old and flexible working hours have stronger associations with increases in fertility than measures that assist mothers withdraw from the labour force. Australia has very low rates of participation in childcare of children under 3, with only 25 per cent of children under three using any formal childcare at all. (ABS 4402.0 2002). And, as will be discussed later, access to flexible hours of work is patchy at best.
- 2.23 Mc Donald notes that women with one child return to work when their child is quite young, and by the time their child is 3-4 years old, they are working at the same rates as mothers of primary school aged children. He also points to community attitudes to childcare for young children, which display a preference for home based care of infants, and part time childcare for children up to age four. This supports his conclusion that, from a fertility perspective, Australia should support a gradual return to work for mothers of pre-school children.

Early Childhood Development

- 2.24 This may well also be in the interests of our children. Any discussion of work and family balance should be strongly focused upon their needs. In a work and family context this means work practices that support parents in their parenting role, and high quality affordable childcare.

- 2.25 Early childhood experts tell us that relatively has emerged over the past fifteen or so years that the “hard wiring” of children brains develops in response to the environment in which they are raised, including the quality of the nurturing they receive.
- 2.26 Scientists now understand the nurturing a child receives in the first three years in particular will affect the child’s brain development, and in turn will affect the adult that child will become. The experiences and the stimuli (both positive and negative) to which a child is exposed will affect the “hard wiring” of the neurons (nerve cells) and the neural pathways of the brain. The development of these “wires” which connect the neurons, is intensive during a child’s first three years, and continues until the child is about ten (Mc Cain and Mustard 1999).
- 2.27 Strategies to eliminate or reduce known risks to early childhood development, and to extend and promote the protective factors are, in the medium to long term, a sound investment. By reducing childhood exposure to these risks and by promoting the protective factors we can reduce the public cost (in dollars and social costs) of poor mental health, adult onset illnesses such as diabetes and cardiovascular disease, of increasing rates of youth suicide, of juvenile involvement in the justice system and so forth. As the expert say, it is better to put the fence at the top of the cliff than keep sending the ambulances to the bottom.
- 2.28 Parental stress is one of the known risk factors, and parents’ access to supportive workplace arrangements is a known protective factor. While not every child whose parents are stressed will do badly, risk factors are cumulative. Measures at the workplace which support parents and reduce the spill over to children have their place in an effective early years intervention program. Poor quality childcare is another risk factor. While most Australian formal care is not poor quality, high quality care is not universally available. There are stresses on the system which are threaten to jeopardize the quality of care, notably the loss of skilled carers from the sector due to low wages and poor career prospects.

- 2.29 In response to this new scientific evidence most developed nations now recognise the need to support parents in their parenting role. One leg of a comprehensive framework supporting parents involves ensuring that working arrangements are responsive to the crucial role that parents need to play in creating a nurturing environment for their children. The other critical leg is investing in the quality of childcare, especially care of pre-school children.
- 2.30 As part of the framework of support for the early years Mc Cain and Mustard recommend that government promote longer parental leave part time work, flexible hours, priority for day shifts, opportunities to work from home, paid leave for care of sick children, and other parent support measures. The NSW and Queensland Commissioners' for Children and Young People make similar recommendations. They call for a three-pronged approach to supporting parents' choice in their parenting and work roles; supporting parents in their roles as parents, workforce development and industrial awards that foster flexible working arrangements, increasing the available childcare, preschool and after school care. (A head start for Australia, 2003)

Addressing discrimination in the workplace

- 2.31 The government must support men and women in their work and caring roles. Bittman et al identified the cultural and workforce pressures that prevent men from taking a greater role in the care of their families and in accessing family friendly working arrangements, workplace culture can shift in response to regulatory intervention as well as education and leadership (Bittman et al 2004). The government has a role in assisting shift workplace culture, through education, communication, exhortation, and regulation. To date the government has ignored the last option. This is despite evidence from at least one survey of Sydney creches that showed that, since the introduction of paid carers leave more fathers were reported to be responsible for the care of children when they are away from day care due to illness.

- 2.32 But because of women's share of the caring work in families it is women who are likely to benefit measures to assist employees to balance with work and family lives. Parenthood has very different impact on men's and women's employment. If women can return to their pre-maternity jobs there is less risk of loss of income, seniority, access to training and career development that is currently associated with motherhood.
- 2.33 Promoting gender equity is critical to assisting employees to reconcile their work and family responsibilities. While women continue to do the majority of the unpaid caring work in families, women will continue to face labour market disadvantage. The institutional environment, including labour market features such as the gender pay gap plays a role in influencing families preferences and practices in how they share the responsibility for caring for dependants.
- 2.34 The award system has played a significant role on ensuring the gender wage gap in Australia is lower than it otherwise would be. Sixty per cent of award dependent workers are women. Recent cases awarding significant wage rises in female dominated occupations such as childcare workers (who stand to receive \$64.50 pw arising from the decision of the AIRC³) and aged care workers (who recently were awarded increases of 23 per cent in the NSW IRC⁴) demonstrate the important role that work value arbitrations play in ensuring equal pay for work of equal value.

2.35 The *Workplace Relations Act* should ensure that the AIRC has clear power to adjust awards to ensure equal pay for work of equal value between women and men.

2.36 The equal pay provisions in the *Workplace Relations Act* should be retained.

- 2.37 Labour market programs need to address women's disadvantage. Workers with primary caring roles spend some time out of the labour force. AIHW suggests that carers face barriers to re-entry to the labour force, which are not

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(1) ³ PR 954938 Ross VP, Marsh SDP and Deegan C, Sydney 13 Jan 2005.

(2) ⁴ Nursing Homes & C7 Nurses State Award, Re (No4) [2005] NSW IRC Comm 88

solely associated with lack of alternative care and inappropriate working hours. The fact of time out of employment will remain a source of discrimination for as long as employers treat time out of the workforce as a measure of (un)employability.

- 2.38 To overcome this, and in recognition that time involved in caring may result in loss of skills, the Victorian Government has established a training grant for parents returning to work after full time care of a child. These \$1000 Parents Returning to Work Grants are issued to eligible applicants for training, HECS fees, child care, and other costs. The Victorian Government has allocated \$11 million to the scheme over four years.

2.39 The government should introduce a special purpose transition to work grants for full time carers to supplement the over-subscribed transitions to work program. The grants should be available to parents to spend on training, HECS Fees, childcare or other return to work related costs.

3 Childcare

- 3.1 Pocock (2003) cites HILDA data showing around 70 per cent of parents have difficulties getting care the hours they require. Recent ABS data (Persons not in the labour force September 2004) reveals that 32 per cent of women who would like to be in paid employment were unable to due to lack of childcare. The government has failed to meet the demand for accessible high quality care to parents over recent years.
- 3.2 Many parents with strong labour force attachment cannot return to work without affordable quality childcare. There is unmet demand for formal childcare, especially long day care. ABS data shows that in June 2002 parents of 106,400 children aged 0-4 years old wanted more care for their child. Forty per cent of the demand was for long day care, 23 per cent for family day care and 28 per cent for occasional care.

- 3.3 The DFACS Census of Childcare Services (2002) reported the proportion of providers reporting no vacancies had risen since the previous census. In 2002, 28 per cent of private long day care centres indicated they had no vacancies, compared to nine per cent in 1999. Community based centres had experienced a similar increase, with 22 per cent reporting no vacancy in 2002, up from seven per cent in 1999. A further 42 per cent and 29 per cent respectively had part time vacancies.
- 3.4 The unmet demand in the 0-2 age group is a function of the additional costs associated with higher staff/child ratios for babies and infants. According to the DFACS Census of Childcare Providers, not for profit centres are more likely to provide infant places. In 2002, 21 per cent of children in family day care and 19 per cent of children in community-based centres were aged under two. By comparison, in the private, or “for profit” sector only 14 per cent of children were aged under two. With the growth of private sector providers this pressure can be expected to increase. Childcare must be affordable, accessible and of high quality. Stability for children, parents, children services staff, and operators is essential. The government must develop policies to maintain this stability in a manner that supports the principles of affordability, accessibility and quality. Poor wages and conditions are driving childcare professionals away from the childcare sector and thus jeopardising the quality of care available. This has been recognised in the decision of the AIRC involving childcare workers wages childcare workers in Victoria and the ACT. A long-term, comprehensive approach needs to be taken that is progressive and genuinely supports the increasing number of Australian working families.
- 3.5 At the end of 2004 the ACTU, in conjunction with the major childcare union the LHMU and ASU, conducted a phone in on childcare. Most callers are mothers, although a number of calls were received from fathers. Calls also came from grandparents who were caring for their grandchildren because parents cannot find or afford suitable formal childcare elsewhere. After collecting data about the caller, most of the questions allowed for open ended

responses, and the phone in was designed to elicit unprompted issues and views from the callers.

- 3.6 Of the childcare workers calling, most had been in the industry more than five years and included people who were past or present directors of childcare centres. Most of the Child Care workers calling expressed concern that they were unable to offer the level of quality care needed due to staffing levels, it is difficult to attract new staff due to low wages.
- 3.7 Many childcare workers also expressed concern over the direction that the industry has taken in recent years with the large growth in private child care centres and the closure of many non-profit centres.
- 3.8 Childcare workers and centre directors cited high turn over in staff, being tired, stressed and are working high levels of unpaid overtime, a lack of recognition for their jobs despite the fact they are caring for a majority of children who are experiencing their most important developmental years.
- 3.9 The majority of childcare workers felt that it was impossible to deliver the quality of care needed for children. This was due to:
- the high numbers of children they were responsible for, inadequate staffing levels and a lack of staff with adequate qualifications;
 - an increase in the numbers of children with special needs with which they do not have the facilities or the staff to cope with;
 - Childcare centres' facilities are run down and aren't being replaced. In some cases facilities are a danger to the workers and the children;
 - Many directors have reported that it is difficult to find qualified staff due to the conditions they work under in many cases this has led to a sacrifice in the quality of care; and

- A majority of the childcare workers thought privatisation of the system was bad as these centres worked under a system of making profits and cut corners on offering quality childcare.

3.10 A number of parents phoning in were happy to report satisfaction with their childcare centre. However others complained of long waiting lists and lack of places that prevent parents from returning to work or taking on a job. Many parents had to put their names on waiting lists before their children are born. Other issues raised went to lack of support and places for children with special needs, rising fees and high cost in comparison to salary. One parent cited losing 75 per cent of her weekly income on childcare fees.

3.11 Parents complained the centres were inflexible. Fees were charged on public holidays which is hard for casual workers who do not receive any pay for public holidays. Poor quality of facilities with a number of parents being unhappy that the lack of available places forced them to put their children into second rate centres.

Waiting Lists		
How long have you been on a waiting list?		
Up to 3 months	21	17%
4 to 6 months	21	17%
7 to 12 months	26	21%
More than 12 months	53	44%
Total	121	100%
How is lack of childcare affecting you in relation to work?		
Unable to seek work	8	7%
Partner unable to seek work	1	1%
Unable to return to work after maternity leave	35	29%
Limits the number of hours I can work	63	52%
Not affected	15	12%
Total	122	100%

- 3.12 Most callers who were waiting for care were waiting for long day care. Fifty two percent of callers who were waiting for a place said the lack of care restricted the number of hours they could work and a staggering 29 per cent said then lack of care prevented them returning to work after maternity leave. Of respondents who had a child place, forty four per cent of respondents said they were prevented from working more hours due to lack of childcare.
- 3.13 Improving access to childcare must be a priority for government. It is hard to see how a 30 per cent fee rebate will address unmet demand for childcare.

3.14 The ACTU calls upon the government to:

- (a) undertake a comprehensive analysis of needs areas;
- (b) develop a national, integrated approach to planning and delivery of early childhood education and care;
- (c) recognise the importance of early years learning, development and the successful transition to school;
- (d) address the shortage of child care places and improve ongoing access to services for all families;
- (e) ensure that all Australian children have access to at least one year of free pre-school education prior to going to school;
- (f) better integrate child care and related services ;
- (g) increase the affordability of child care services for all families;
- (h) commit to fund improved wages and conditions for childcare staff; and
- (i) ensure the provision of high quality services.

- 3.15 Despite chronic shortages across a number of areas it is difficult to get accurate information about un-met demand in childcare places from all levels of government. A clear overview of services and programs available to parents

and their children and the identification of gaps needs to be the starting point for a national plan to address child care access issues. The most recent ABS survey found that between 2001 and 2002, an 174,500 children missed out on some form of childcare due to lack of access.

- 3.16 The ACTU supports a more planned approach by the Federal Government, as opposed to the current ad hoc allocation of new places, to assist in meeting changing demographic needs in many suburbs and regions and un-met demand due to caps on services.
- 3.17 In long day care, the shortages appear to be greatest in low-income metropolitan or regional areas. Since the Federal Government withdrew capital funding for non-profit centres, new services being set up tend to be in high-income areas. Despite having to allocate funding for targeted places in new centres in areas of high, unmet demand the government has yet to acknowledge that market forces are inadequate in dealing with appropriate access to childcare facilities.
- 3.18 There needs to be a commitment to funding programmes to support the development of new centres in areas with unmet demand, such as in lower socio-economic communities, and rural or regional areas.
- 3.19 There is also evidence of a growing shortage of places for young children aged 0-2 years old. Care for this age group is significantly more resource intensive under current licensing arrangements which have resulted in a chronic shortage of places for this age group.

- 3.20 A thorough analysis across all levels of government needs to be made of gaps in accessibility of childcare facilities on both a geographic and community needs basis. Consideration should be given to linking accreditation with proportionate supply of places for babies and infants.
- 3.21 The government should implement funding programmes to increase places for children aged 0-2 group.

3.22 Despite the Government's allocation of spaces for 40,000 additional Outside School Hours Care and additional Family Day Care, there is evidence that demand for OSHC remains strong.

3.23 The ACTU seeks a commitment to funding programmes to support the development of new Long Day Care centres in areas with un-met demand.

3.24 Funding should recognise the geographic, socio- economic and cultural factors that may inhibit families access to children's services. These may include rural and remote communities, indigenous communities, families for whom English is a second language and families where children or parents have disabilities. The lack of service may arise from factors such as the physical or cultural inappropriateness of services, insufficient numbers of staff to provide the level of care and education required, or lack of specific expertise in staff. Both State and Federal Governments need to understand the varying capacities of geographical communities to develop and sustain quality early child hood services and provide funding and support accordingly.

3.25 Funding programmes are required for the development of services in areas of particular economic and social disadvantage.

3.26 The government should undertake an analysis of the varying capacities of communities to develop and sustain quality early childhood services and commit to funding programmes for the development of services in areas of particular economic and social disadvantage.

3.27 Many parents struggle to juggle the childcare needs of children of varying ages. Work-based, mixed care or co-located services would assist in balancing parental needs and work demands. It is recognised that in most states and territories, preschool education is part of the education system, and that a number are exploring options of co-locating early years childcare and after hours and vacation child care within educational institutions. Options for the provision of more flexible and convenient care include:

- The establishment of multi-function early childhood education and care centres, such as long-day, pre-school, before and after school, and occasional care.
- The co-location of related services such as child care centres with maternal and child health services, play groups, mothers groups, toy libraries, parenting classes and support, and community centres.
- The piloting of co-located or multi-functional early childhood services within educational institutions.
- The establishment of work-based services.

3.28 In addition, the decline in population in many rural and non-metropolitan communities has been accompanied by a decline and withdrawal of both services and private resources.

3.29 Federal and State Governments need to better utilise existing community resources, particularly in these areas. The concept of co-located or joint multi-purpose facilities is equally applicable in areas of high need and economic hardship.

3.30 The ACTU supports the development and implementation of State and Federal policies to provide incentive funding to encourage growth directed at co-located or multi-function arrangements which maximise benefits to the local community.

3.31 High quality of care is integral to a work and family policy. Witness evidence in the AIRC Work and family case indicated that parents resign rather than accept sub standard care. Government policy needs to recognise that the early years of a child's life are the most critical for the development of children's future well being. Stringent and enforceable accountability is particularly important given the large number of 'for profit' services. Parents must be assured that quality childcare will be provided in centres despite the imperative to produce financial surplus for private profit.

3.32 In addition, the ACTU has concerns regarding the increasing corporatisation of childcare services and the effect this trend may have on the quality, accessibility and affordability of care as well as the conditions of childcare staff. There is currently an ad hoc accreditation system in place for some children's services. This system should be extended and enhanced to for all children's services to ensure that quality childcare is always the paramount consideration and never compromised.

3.33 Spot checks with appropriate penalties need to occur in order to genuinely ensure centres are maintaining high quality care, such as in the provision of adequate, nourishing food, adequate staffing and supervision, and quality educational and developmental programs for children in care.

3.34 The ACTU supports the development of a single, nationally agreed quality assurance and regulatory scheme, but only if such a scheme does not diminish any of the current regulatory and licensing standards that exist across the States and Territories.

3.35 Childcare facilities must be staffed adequately. The ACTU recommends staff to child ratios of at least 1:4 for children under 12 months; 1:5 for children from 12-23 months; and 1:8 for children from 24-71 months. There should be a minimum of one qualified staff member for every unqualified staff member. Adequate government funding of childcare must be provided to accommodate decent wages and working conditions for childcare professionals. At the same time it is not appropriate that centres receive additional funding to cover salaries, but pass the costs on to parent. Additional government funding to cover wage increases should be tied to fee restraint.

3.36 The main determinant of quality in children's services is the quality of the staff. Well-qualified and well-remunerated staff are capable of providing high quality childcare and educational opportunities. Government policies must attract and retain highly skilled childcare professionals. In line with the AIRC's recent

January 2005 decision,⁵ wages for all childcare workers must be brought in line with those of occupations with comparable skills and qualifications.

3.37 It is clear that parents should not be expected to bear the full brunt for any increases in pay for childcare professionals. The Federal Government has moved towards direct subsidising of families through the payment of, for example, the ChildCare Benefit. It is clear that current levels of this payment will not be sufficient to enable parents to pay for any reasonable pay increase.

3.38 The government must provide increased government funding levels to accommodate improved wages and conditions for childcare professionals and a commitment to provide incentive funding tied to improved staff wages, qualified staff ratios and services.

3.39 A strategy and program needs to be developed which addresses the shortage of enrolments in children's services courses. Recognition of prior learning schemes and options for re-entry and re-training should be extended. At least one tenth of the working week of children's services staff should be recognised as non-contact time for preparation and on-going training and professional development.

3.40 A system that recognises the importance of childhood requires integration of all services that affect children and families across existing levels of government. Where poor arrangements exist between the levels of government, families experience fragmented service delivery and limited options. An integrated system of local networks needs to be developed, linking child and family support services such as childcare, maternal and children's health, early intervention, family support, and early childhood education.

3.41 The ACTU would support the development of an integrated system of local networks, linking child and family support services such as childcare, early childhood education, maternal and children's health, early intervention, and family support be developed.

(1) _____
(3)⁵

3.42 There is a serious lack of nationally comparable data on program operations, participation rates and outcomes for children. It is crucial that proper research is conducted to ensure family friendly initiatives are effective and well targeted.

3.43 The ACTU recommends the establishment of a National Advisory Body comprising of:

(a) industry representatives;

(b) state and territory government representatives;

(c) local government representatives;

(d) parent representatives;

(e) unions; and

(a) special needs groups.

3.44 The role of the Advisory Body would be to:

(a) scrutinise all proposed government policies in relation to children and families;

(b) identify needed policy reforms;

(c) inform government about the capacity of services to meet objectives;

(d) identify barriers and solutions to services meeting objectives;

(e) facilitate improving links with related industries including education;

(f) promote the contribution of the children's services industry to the national economy;

(g) recommend on improved wages and conditions for childcare staff in early childhood services;

- (h) oversee the development of a national training and employment scheme;
- (i) provide advice and co-ordination in relation to existing standards in service provision and proposals for proposed standards; and
- (j) commission research.

3.45 The body would need to be powerful, well resourced, influential and respected and the organisations dealing with it need to be accountable to it.

3.46 The ACTU is highly dubious that the delayed 30 per cent rebate will improve availability of care. While it will address affordability for higher paid workers, it is a regressive measure. The decision to cap the fees, whilst designed to prevent profiteering by operators, is a significant departure from the scheme that was announced before the election, and the delay in its operation will mean many parents simply wont claim the rebate for the current year in their 2006 tax return.

3.47 Instead of adjusting what is a flawed proposal, the government should commit to an independent review of the effectiveness of the Child Care Benefit as a measure in enhancing affordability for low and middle-income families. The review should examine other measures that would guarantee all children have the opportunity to attend quality care for a minimum of 20 hours per week.

4 Family friendly working arrangements

4.1 Although more than a decade has passed since the Industrial relations Reform Act 1993, and in spite of almost a decade under the Workplace Relations Act, and in the face of numerous exhortations to employers bargaining at the workplace level has not resulted in the widespread introduction of working arrangements that assist workers in balancing the demands of work and family.

- 4.2 This is despite evidence from Australia and overseas, recognised and promoted by employer bodies and governments at all levels, that there are sound business reasons to introduce family friendly working arrangements. These include improved retention, return on investment in skills, lower turnover costs, and better productivity and worker morale. (Dex and Scheibl 1999)
- 4.3 In Australia family friendly provisions are not widespread. A 2001 study (Whitehouse 2001) of family friendly provisions in 2,379 collective agreements and 889 AWAs drawn from the ADAM⁶ database in March 2001 showed that The spread of family friendly provisions is low, the rate of the spread is falling, and that certain types of workplaces are more likely to bargain for family friendly working arrangements.
- 4.4 Whitehouse found that work and family measures are more common in the public sector. Within the private sector they are more common in larger workplaces, and female or mixed gender workplaces. Her finding that certain male dominated industries are very unlikely to bargain for family friendly arrangements might contribute to further gender segmentation of the labour market.
- 4.5 Whitehouse' research indicates that the existence of some family friendly provisions in agreements is not evidence that the workplace is family friendly. She found that the existence of some family friendly measures also correlated with some family unfriendly measures such as the capacity of the employer to unilaterally alter the hours of work.
- 4.6 In may 2002 ACIRRT also examined family measures in agreements. Its report, prepared for the Queensland Department of Industrial Relations. (ACIRRT 2002) looks at both the incidence of family friendly provisions in Queensland and Federal enterprise agreements and the types of provisions. Both a quantitative and qualitative analysis was undertaken. With respect to the 721 federal agreements subject to analysis the study found that 24.3 per

cent of these agreements contained a reference to family friendly measures with “ ... *the industries most likely to provide family friendly [measures] were the Community Services industry followed by Electricity, Gas and Water, Recreational and Personal Services and Wholesale/retail trade industries.*”

- 4.7 Once specific family friendly measures were considered, the proportion of federal agreements continuing those measures varied quite substantially:

(1)

(4) ⁶The agreements Database and Monitor (ADAM) is maintained by ACIRRT.

Family friendly measures in federally registered agreements

Provision ⁷	% of Federal Agreements
Family/carer's leave taken as part of sick leave entitlements	36.6
Family/carer's leave taken in addition to sick leave	6.0
Family/carer/s leave taken as part of other leave (e.g. annual, bereavement, TOIL, RDOs)	8.9
Employee may be granted family/carer's leave without pay	20.2
Employee may be granted family/carer's leave on half pay	0.4
Paid maternity leave	12.2
Paid paternity leave	6.2
Standard parental leave	39.8
Any reference to part-time employment	46.5
Provision for job sharing	6.0
Working from home/telecommunicating	2.6
Career break scheme	0.8
Reference to 'flexible hours of work' provisions	62.7
Employers has discretion to alter hours	21.9
Hours may be changed by mutual agreement	31.2
Averaging hours beyond standard working week	30.2

4.8 These figures show that the provision of family friendly measures in agreements is quite variable. A further breakdown by industry provided in the report shows a further level of variability based on industry. The proportion of federal agreements containing any reference to family friendly measures, while at 24.3 per cent across all industries, varies from 10.3 per cent in metal manufacturing, 12.6 per cent in mining/construction, 17.2 per cent in transport/storage to 48.4 per cent in recreation and personal services and 47.1 per cent in community services. This break down further reinforces the uneven spread of such provisions.

4.9 The Department of Employment and Workplace Relations (DEWR) report *Agreement Making under the Workplace Relations Act 2002 and 2001*. (DEWR 2002) sets out the incidence of family-friendly provisions in agreements:

(1) _____

⁷ While these figures may appear to be remarkably different to those in the Whitehouse paper, it needs to be remembered that Whitehouse excluded any existing statutory provisions from her consideration. This exclusion, if applied to the figures in this table, would affect provisions such as carer's leave, parental leave etc.

Provision	1998-1999 average % of agreements	2000-2001 average % of agreements
Flexible annual leave	6	6
Access to single days annual leave	9	13
48/52 carer's break	2	3
Unlimited sick leave	1	1
All purpose paid leave	5	3
Family/carer's leave	28	27
Access to other leave for caring purposes	21	19
Paid family leave	3	3
Unpaid family leave	*	9
Extended unpaid parental leave	1	2
Paid adoption leave	1	2
Paid maternity/primary carer's leave	10	7
Paid paternity/secondary carer's leave	2	4
Part-time work	22	25
Regular part-time work	7	7
Home based work	2	1
Family responsibilities	3	3
Childcare provisions	1	1
Job sharing	2	3

Source DEWR Report, page 81

4.10 This report confirms Whitehouse's assessment that the incidence of work and family provisions in agreements is patchy.

4.11 A study using management surveys from (the now a bit dated) AWIRS 95 data indicates that the workplaces most likely to provide family friendly working arrangements are those that employ higher paid employees, predominantly in professional and para-professional occupations. (Whitehouse and Zetlin 1999). The authors report some evidence of market polarisation in access to family friendly provisions, explained partly by differential assessments by employers of the business case. Zetlin and Whitehouse also indicate that their case studies in best practice organisations revealed a view amongst employees that utilisation was less than a right, that there were career and job security risks associated with accessing provisions.

- 4.12 An AIFS analysis of AWIRS data by (Gray and Tudball 2000) looks not only at the workplace characteristics but also the employee characteristics that are associated with access to family friendly working arrangements. They conclude that there is a significant skew in access. Workers with lower levels of educational attainment, lower rates of pay, and shorter job tenure are less likely to have access to family friendly workplaces conditions. They find an association between higher paid, better educated employees and access to the benefits of family friendly work practices.
- 4.13 Overwhelmingly the evidence points to a low spread of family friendly working arrangements in formal bargaining, and that evidence probably overstates the extent to which agreements are providing improvements. Where there is bargaining, or informal arrangements, they are more likely to apply to higher paid, higher skilled employees.
- 4.14 This suggests that if we are to meet the tests of universal access advocated by Mc Donald then workplace bargaining can not be the only vehicle open to government to deliver family friendly workplaces. While it is not the government's preferred method, the clear failure of the market to deliver will not be remedied by further de-regulation. It is the ACTU's strong submission that work and family balance will not be advanced without changing the way work is done. And, absent regulation, this seems unlikely.

5 Workplace Regulation

- 5.1 It is not unprecedented for the government to regulate minimum conditions of employment associated with workers with family responsibilities. While the Keating government by creating a statutory parental leave regime for award free workers, the coalition continued this when it enacted Schedule 1A of the WRA governing the arrangements for Victorian workers.
- 5.2 The Commonwealth's power to do so drew on the ratification of the ILO Workers With Family Responsibilities Convention (C 156). Sadly, far from

meeting its obligations under this convention, the ACTU strongly submits that the government has failed in its obligations under ILO 156 in that it has not taken all measures to ensure that conditions of work assist employees reconcile their work and family roles.

- 5.3 In particular the regime of leave and hours of work that govern Australian workplaces are far from best practice. In fact deregulation of the labour market has been accompanied by the growth of irregular hours of work, casual and insecure employment and the extension of employer initiated flexibility in hours of work - each of which is antithetical to the requirements of employed care-givers.

The regulatory framework

- 5.4 It is an object of the WRA that it assist employees to balance their work and family considerations “through the development of mutually beneficial work practices”. (Section 3(i)).
- 5.5 In addition section 93A provides that:

SECTION 93A COMMISSION TO TAKE ACCOUNT OF FAMILY RESPONSIBILITIES CONVENTION

In performing its functions, the Commission must take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:

- (a) preventing discrimination against workers who have family responsibilities; or*
- (b) helping workers to reconcile their employment and family responsibilities.*

- 5.6 The WRA must continue to provide the framework that fosters the development of working arrangements that assist employees reconcile their work and family responsibilities. In any review of the WRA, section 93A should be retained.
- 5.7 The WRA should be amended to strengthen the role of the AIRC in fostering family friendly working arrangements by requiring the AIRC to ensure that awards contain effective and innovative provisions to assist workers to combine work with family responsibilities, including provisions relating to hours of work.
- 5.8 The WRA should be amended to require the AIRC to examine proposed agreements in relation to whether or not they positively assist the workers covered by the agreement to combine work with family responsibilities, and in particular, that flexible hours provisions be held to contravene the no disadvantage test if they could result in disadvantage to workers with family responsibilities.
- 5.9 The AIRC should have clear power to make awards containing all forms of family leave (including planned, long term leave) as allowable award matters.

5.10 Workers with family responsibilities, particularly women, face in participating in paid employment. The *Sex Discrimination Act 1984* has amongst its objects “to eliminate, so far as is possible, discrimination against persons” on the various grounds including family responsibilities. Yet remedies are only available in cases of direct discrimination on the grounds of family responsibilities that result in termination of employment.

5.11 This has led to the development, in recent years, of a body of cases which have found that industrial practices which have until now been regarded as neutral, have been found to have a bias against women, or workers with family responsibilities.

- 5.12 The evolution of the case law indicates that insisting on full time return to work after parental leave, or requiring an employee to attend the workplace for fixed hours or full time, will, if not a reasonable requirement, constitute discrimination against a women on the grounds of her sex.
- 5.13 These cases recognise that it may be more difficult for a person with caring responsibilities to comply with traditional working arrangements than a person without those responsibilities. Anti discrimination tribunals that have found that requiring full-time attendance at the workplace constitutes a condition, requirement or practice, and that refusal to vary the requirement constitutes a practice capable of attracting the anti-discrimination jurisdiction.
- 5.14 The principles that can be distilled from the recent authorities are:
- The condition or requirement that an employee be available to work full time, or work inflexible hours of work can constitute the imposition of a condition, requirement or practice for the purposes of section 5(2) of the *Sex Discrimination Act* (indirect discrimination) and other similar provisions.
 - The continued requirement to work particular hours of work or at a particular location where a woman has responsibility for the care of dependents may constitute direct discrimination, (*Song v Ainsworth Game Technology* [2002] FMCA 31) or indirect discrimination on grounds of sex or family/carer status, (*State of Victoria v Schou* 3 VR 655, [2004] VSCA 71, *Gardiner v NSW WorkCover Authority* NSW ADT 021126).
 - Failure to accommodate a request for part time employment where a women has responsibility for the care of a young child may constitute the imposition of a requirement to work full time. If also unreasonable it will constitute indirect sex discrimination. (*Hickie v Hunt & Hunt* [1998] HREOCA 8, *Bogle v Metropolitan Health Services Board Equal Opportunity tribunal of Western Australia* (2000) EOC 93-069 (7 January 2000), *Escobar v Rainbow Printing Pty Ltd*, (No 2) [2002]

FMCA 122, *Mayer v Australian Nuclear Science and Technology Organisation* [2003] FMCA 209, *Reddy v. International Cargo Express* [2004] NSWADT 218, *Howe v Qantas* [2004] FMCA 242).

5.15 However, due to the limited grounds for remedy specified in the *Sex Discrimination Act*, these cases have been prosecuted as discrimination on the grounds of the employees' sex, not on the grounds of family responsibilities. This has the perverse effect of denying men with family responsibilities access to the same remedies as are available to women with family responsibilities.

5.16 The Sex Discrimination Act should be amended to prohibit both direct and indirect discrimination in employment on the grounds of the employees' family responsibilities.

6 Minimum Conditions of Employment

6.1 When it comes to leave and other arrangements to support in terms of support for working parents and carers Australia lag behind most of the OECD, and the EU as well. The ACTU recommendations below would go some way to addressing this. The matters addressed below (with the exception of paid maternity leave) were the subject of the claim in the Work and Family Test Case.

Leave for the care of infants

6.2 The key measure to assist parents during the period of the birth of a child is maternity and parental leave. The regime for parental leave in Australia lags behind the rest of the developed world. Our leave is shorter than most, and unpaid. The regime of parental leave should be improved as follows:

- A period of at least 14 weeks paid leave should be available to all mothers on the birth of their child;

- Paternity leave/leave to fathers on the birth of a child should be extended beyond 1 week;
- The duration of the combined leave (maternity/paternity/parental leave) should extend at least until the child is two years old;
- The existing parental leave scheme should be amended to extend eligibility to all employees regardless of employment duration; and
- Employers of employees on parental leave should be obliged to communicate any changes to the employees status, responsibilities or working arrangements that would affect the employees return to work arrangements.

14 weeks paid maternity leave

- 6.3 The ILO Maternity Protection Convention (No 183) and the UN Convention on the Elimination of All Forms of Discrimination Against Women both note that the purpose of paid maternity leave is to protect the health and economic security of mothers and their new born children. Australia stands along with the USA as the only developed nations to fail to provide decent paid maternity leave. The government's refusal, despite a recommendation from its own Sex Discrimination Commissioner, to introduce paid maternity leave is sorry reflection on our nation.
- 6.4 Workplace bargaining, certified agreements, awards, AWA's and company policies have delivered paid leave to only 38 per cent of mothers. Since 1995 the proportion of women eligible for paid maternity leave has risen by only 2 per cent, and paid maternity leave is more likely to be available to higher paid women in higher status occupations employed in full time jobs and by large organisations or public sector employers. (Baird, 2003) Only 21 per cent of part time employees have paid maternity leave, and less than one in 200 casuals. Given that many mothers return to work in these jobs, paid maternity leave for a second child would be rare.

- 6.5 Of enterprise agreements providing paid leave, the average duration is 2-6 weeks, well below the ILO's 14 week minimum period.
- 6.6 In most OECD nations, the period of maternity leave is designed to provide income security and job protection to the mother sufficient to cover the period of the birth of the child, the establishment of breastfeeding, and the care of the infant. It is generally accompanied by paternity leave, which allows the father to care for the mother at the time of the birth. In addition, most OECD nations provide parental leave which leave designed to provide job security (and often income protection) for a longer period to enable parents to choose to care for their child at home. Attachment 1 provides a summary of the maternity and paternity leave provisions across Europe.
- 6.7 Since the publication of that table, the UK government has announced an intention to extend paid maternity leave to 12 months, and a regulatory impact statement is currently open for comment.
- 6.8 Despite a recommendation by HREOC in it's *A Time To Value* report the government has persistently refused to introduce paid maternity leave. The \$3000 tax free maternity payment is an inadequate proxy for paid maternity leave, as it does not guarantee income replacement, or even income replacement at two thirds replacement earnings as required by the ILO Maternity Protection Convention (ILO 183)⁸.
- 6.9 During 2002 the ACTU made submission to both HREOC and the Senate inquiry into the Democrats *Workplace Relations Amendment (Paid Maternity Leave) Bill*. Our submissions supported the introduction of paid maternity leave, and developing alternative models which would ensure that the objectives of paid maternity leave were achieved while ensuring that the (relatively low) costs of providing this leave were shared equitably between individuals, employers and the government. In summary the ACTU submitted that the government should provide payment to the equivalent of 14 weeks at

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(5) ⁸ Australia has not ratified this convention.

minimum wages, with a levy upon all employers providing additional payment to ensure women received income replacement, up to a cap of average weekly wages.

- 6.10 While we stand by those submissions, the ACTU accepts that the Sex Discrimination Commissioner in her report undertook to balance the views of the community. The ACTU has stated publicly our support for the model proposed by HREOC, and we reiterate that support. The government should introduce the model of maternity payment proposed in the report of the Sex Discrimination Commissioner's report *A Time to Value*.

6.11 A period of at least 14 weeks paid leave should be available to all mothers on the birth of their child. The Sex Discrimination Commissioner's recommendations contained in *A Time to Value* should form the basis of the scheme.

Fathers' role at the birth of a child

- 6.12 Under the current statutory regime (WRA, Schedule 14) fathers are entitled to take up to 52 weeks parental leave. However only one week may be taken simultaneously with the mother at the time of the birth of the child. The leave is unpaid.
- 6.13 A Similar regime exists in federal awards. The ACTU has sought to increase this to 8 weeks for two reasons. Firstly, changing attitudes to fathers' role mean men are more likely to want to take longer periods of leave associated with the birth of their child. But ABS data (ABS 2003 Working Arrangements Survey) indicates almost 30 per cent of men have no say over when they take their annual leave.
- 6.14 Secondly, mothers are more likely to rely on fathers at this time for care and support that they have in the past. Traditional support networks, (sisters, neighbors etc) have disappeared as more women are in paid work. And delayed child birth and older mums, more multiple births, increased caesarian rates (29.7 per cent for mothers aged 35-39), more assisted vaginal births,

and shorter hospital stays (down from 5.3 days on average in 1991 to 3.7 days in 2000) means dads are needed at home more than they were even 15 years ago.

- 6.15 A survey of Australian mothers indicate that a majority the more severe discomforts associated with post birth recovery are ameliorating around eight-weeks after the birth of the child. This included excessive prolonged bleeding, hemorrhoids, a sore perineum, mastitis and urinary incontinence. (Thompson et el 2002)
- 6.16 Mothers need for support extends beyond the first week after the birth of the child. A supportive home environment is associated with the successful establishment of breastfeeding, and is protective against the risk of post-natal depression. Providing families with greater flexibility to share the parental leave available to them without increasing the amount of leave taken overall would foster maternal and child health, give fathers the option to provide care and support to the mother and other children in the family and provide time for the father to bond with the child.

6.17 Parents should have greater choice in how they combine the existing leave. The existing limit of 1 week paternity leave at the time of the birth of the child should be removed and parents should be given greater choice in how they arrange their combined parental leave entitlement.

6.18 Paternity leave/leave to fathers on the birth of a child should be extended beyond 1 week, to at least 8 weeks.

More choice for parents in the care of infants

- 6.19 The ACTU prosecuted applied to extend award-based parental leave from one to two years in order to provide parents with greater choice over when they place their child in non-parental care and the timing of their return to work.
- 6.20 The age of two was selected because:

- Most mothers return to work some time after the child's first birthday and the commencement of primary school. Only the minority (about a third) return before their child is 12 months old. Extended leave thus fosters maternal labour market attachment.
- The appears to be greater acceptance of, and use of formal care of children after aged two, and early childhood development research suggests that around 12 months is not the ideal time to settle a child into childcare.
- There are acute shortages of child care in the 0-2 age group.
- The time taken to care for children eases after age two.
- International comparisons revealed that many developed nations provided two or more years paid parental leave.

6.21 Today most mothers return to work before their youngest child is in primary school, however the majority don't return to work within the first 12 months after the birth of the child. The current regime of 12 months maternity leave caters to the minority of families. The labour market of the 1970s which informed 1979 Maternity Leave Decision was very different. In 1978 married women represented only 22.5 per cent of the total labour force, and only 16 per cent of couple mothers with a child aged under 12 months were in paid work. The 1979 Maternity Leave Decision provided job security to those atypical women who remained in employment during their children's primary school years. Only a small minority of women with very strong attachment to the workforce came within the protection of the safety net. Overwhelmingly mothers resigned from employment until their children were at school.

6.22 By August 2001, 35 per cent of couple mothers with a child aged under 1 year, and 48 per cent of mothers whose youngest child was under 2 were employed. Fifty-nine per cent of mothers of pre-school children were

employed.⁹ For first-time mothers the employment rates are even higher. McDonald reported that in 1996, 57 per cent of mothers with one child aged 1-2 were employed, and 68 per cent when the child is aged 3-4. (Mc Donald 2001).

- 6.23 The OECD has observed that the employment rates for Australian mothers with the youngest child age 3-6 is 9 percentage points above that of all Australian mothers and has been for the last ten years, while in 1985 the gap was only three percentage points (OECD 2003).
- 6.24 The current 12 months parental leave does not provide job protection to the majority of mothers who return to the workforce before their child reaches primary school, but after their youngest child's first birthday. About one third of mothers return to work within the first year, and another third over the next two or so years. This is a gap in the safety net that should be fixed.
- 6.25 Extended parental leave strengthens the labour market attachment of some mothers. Longer periods of leave are associated with earlier return to work of some mothers who would otherwise leave the labour market following the birth of their child. This earlier return preserves the mothers' skills, and promotes her economic independence.
- 6.26 The timing of the return to work is influenced by parents views about when non-parental care of their children is appropriate, as well as whether non-parental care is available. The timing of this is complex and highly individual. But, as a generalisation, the Australian community is generally wary of formal childcare for infants and young children. As the Table below shows acceptance of formal care increases with the age of the child, but is very low when the child is aged less than 12 months old. While there is still quite low support for long hours of care for older children, by age 2 there is growing acceptance.

(1) _____

Acceptable age by which a child could attend organised childcare for less than 20 hours per week and for more than 20 hours per week, fathers and mothers of children aged less than five – Australia 2000

Acceptable Age	Less than 20 hours		20 hours or more	
	Father (per cent)	Mother (per cent)	Father (per cent)	Mother (per cent)
Under age 1	14	26	6	13
Under age 2	41	42	19	27
Under age 3	53	63	29	35
Under age 4	72	81	44	49
Under age 5	86	89	64	69
At no age under 5	8	7	28	27
Don't Know	6	4	8	4
Number	135	191	135	192

Source: AWU Negotiating the life course survey 2000 round, Source : Mac Donald (200X).

6.27 ABS data shows that the use of formal care increases with the age of the child. In 2002 only seven per cent of babies under one had used any formal care. In 2002, 66 per cent of children under one were cared for exclusively by the parents and 27 per cent had been cared for by a combination of parents and informal carers, usually grandparents. By the time the child is two, 41 per cent had used some formal care, either alone or in combination with informal care. Two thirds (65 per cent) of children had used some non-parental care by their third birthday. (ABS 2002 Childcare 4402.0)

6.28 Research by La Trobe University's Dr Cheryl Dissanayake submitted to the AIRC indicates that the end of maternity leave is not the best time to settle children into care. Dr Dissanayake's evidence was that attachment theory and stranger anxiety suggested that the last quarter of the first year is the most difficult time to settle children in to care.

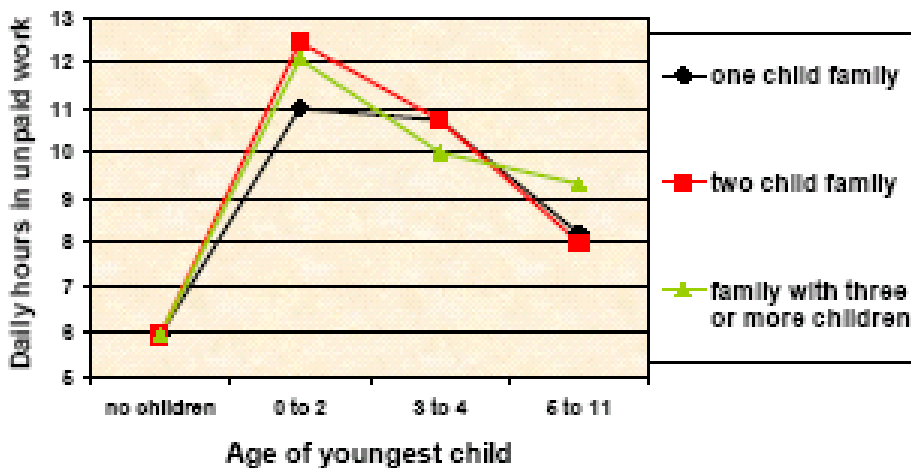
6.29 The first two years of a child's life are the most demanding upon parents. Mothers of young children are particularly pressed for time. An analysis of the ABS Time Use Diaries (Craig 2003) shows that the age of two is associated with some alleviation of the time pressure associated with care of children, freeing up carers to return to work. The time spent in unpaid care is at its peak when children are aged under two. Time use data suggests that households with one child aged under two spend on average 11 hours per day on unpaid work, compared to only six hours per day in childless households.

If there is more than one child up to households spend on average 12½ hours in unpaid work. In households with older children fewer hours spent are spent in unpaid work. Most of these hours of unpaid work fall to the mother. Mothers of children 0-2 undertake up to an average of nine hours per day unpaid work, compared to the average of four hours per day unpaid work by childless women, and one hour for childless men. (Craig 2003)

6.30 Craig found that the time devoted to care of children is greatest in the pre-school years, and particularly acute in the first two years of the child's life. The intensity of caring for preschool children diminishes as the child gets older.

6.31 The demands on parents time for unpaid work is extreme during the first two years, but falls away as the child ages. The time involved with the care of infants under 2 years points strongly to the need for parents of young children to be freed of their work commitments during this period.

Figure 1 Household unpaid work by number and age of children



6.32 Earlier in this submission we referred to the shortages of child care places for the 0-2 age group. While improved childcare provision should be the primary remedy, the extension of leave would provide parents with some option in the absence of care, and more genuine choice if it were available.

- 6.33 The career break associated with child rearing is a source of labour market discrimination against women. Mothers who take longer than 12 months leave resign and find new employment. There is a penalty associated with changing employer, which is in addition to the loss of earnings and career interruption associated with maternity leave. The penalty is the loss of accumulated entitlements (long service leave, accumulated sick/personal leave, retrenchment pay) and seniority with their existing employer. ABS Career Experience 2003 data shows that in 2002 employer assisted training was provided to 44.6 per cent of women who had worked full time with their employer for more than 5 years, compared to only a third of women with their current employer for less than 12 months. Only 16 per cent of women employed part time received employer assistance with their training.
- 6.34 Further penalties apply when mothers seek reduced hours of work, which is predominantly casual employment.
- 6.35 As Attachment 1 shows, almost every European nation provides more than 12 months job protected leave, mostly paid. Australia is a world lagger in this regard.
- 6.36 Extended leave would improve the choices open to parents in the care of their children and address one cause of women's labour market disadvantage. The extension of leave would have minimum impact across the economy, as there is moderate demand for extended unpaid leave. But as the number of eligible employees having babies each year is just over one per cent of the workforce, the impact of extended leave across the economy will be miniscule.

6.37 The duration of the combined leave (maternity/paternity /parental leave) should extend at least until the child is two years old.

6.38 The government should amend Schedule 14 of the WRA to provide for a minimum of 104 weeks of parental leave.

7 Minimum Conditions of Employment – assisting the transitions back to work after parental leave

Part time employment

- 7.1 Whether the parents return to work two weeks or two years after the birth of their child, a great number return on a part time basis. Yet , and in spite of the government's stated support for part time work for parents combining paid employment and parenthood, many workplaces do not offer part time work. Much part time work is poor quality, and associated with working arrangements that are they antithesis of family-friendly. Part time work that is also casual involves no annual leave, no carers leave or sick leave, little control or predictability in hours, and less security in income. Permanent part time work is preferable (although it should be noted is still associated with lower access to training and promotional opportunities than permanent full time employment).
- 7.2 Promoting a return to the employees pre-parental leave job will ensure job continuity, including the retention of working conditions associated with seniority and job tenure (eg long service leave, accumulated sick leave, promotional opportunities).
- 7.3 A gradual return to employment is favored by many Australian mothers. Of mothers in couple families only 21 per cent of mothers families with a child under 6 worked 35 hours per week or more in 2001, and just 13 per cent of lone mothers had full time jobs. When children are primary school age not only do employment rates increase, but the rates of full time employment also increase.

Employment rates of mothers by age of youngest dependent child, Australia, 1985 to 2003 (%)

	Employment status		
	Employed full-time	Employed part-time	All Employed
1985 (July)			
0-4	11.1	17.9	29.0
5-9	21.3	26.5	47.8
10-14	28.1	26.2	54.3
Total (including dependents aged 15-20)	20.3	25.3	45.6
1995 (June)			
0-4	15.8	28.9	44.7
5-9	26.1	37.9	64.1
10-14	35.7	33.7	69.4
Total (including dependents aged 15-24)	25.8	32.1	57.9
2000 (June)			
0-4	15.0	31.0	45.0
5-9	25.1	38.4	63.5
10-14	35.5	35.2	70.8
Total (including dependents aged 15-24)	25.6	33.4	59.0
2003 (June)			
0-4	14.9	31.3	46.1
5-9	23.8	41.9	65.4
10-14	35.2	37.0	69.5
Total (including dependents aged 15-24)	25.7	35.4	60.4

Source: ABS, Labour Force Status and Other characteristics of Families, Australia (Cat No. 6224.0) and Data Cubes 6291.0.55.001

Employment rates for couple and lone mothers by age of youngest child, Australia, 2001 (%)

Age of youngest child	Employed 35+ hours	Employed 25-34 hours	Employed <25 hours	Total employed
Couple mother				
0	8	4	24	35
1	14	7	28	48
2	16	8	28	52
3	19	9	28	55
4-5	21	10	28	59
6-13	29	14	27	70
14-18	38	14	22	75
Total	24	11	26	61
Lone mother				
0	4	2	9	14
1	6	3	14	23
2	9	4	16	30
3	11	5	19	35
4-5	13	6	20	40
6-13	21	9	23	52
14-18	37	11	18	66
Total	20	8	19	47

Source: Pocock, 2003, 73 (from unpublished 2001 census data).

7.4 There appears to be unmet demand for part time jobs amongst mothers of young children, from the ranks of mothers working full time, and from those outside the labour force. As the table shows, 43 per cent of mothers of children under 5 who were working 35 or more hours per week would have preferred fewer hours of work.

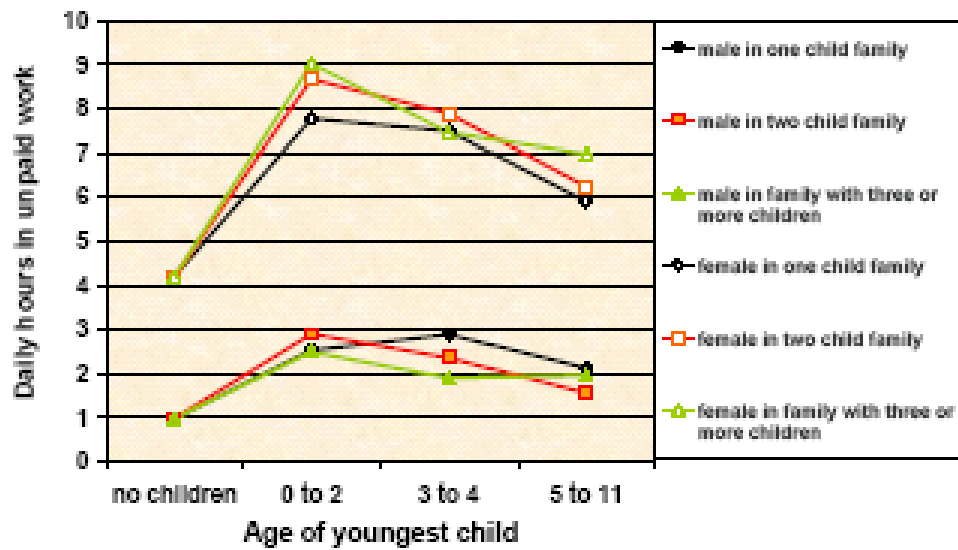
Actual versus preferred working hours, Australian women 1996

Women with youngest child 0-4 years				
Hours in paid work per week	Happy with hours (%)	Prefer more hours (%)	Prefer fewer hours (%)	Prefer no paid work (%)
1-14 hours	79	15	3	3
15-29 hours	79	5	8	8
30-34 hours	70	0	30	0
35 + hours	50	0	43	8
Women with youngest child 5-12 years				
1-14 hours	69	31	0	0
15-29 hours	75	13	7	4
30-34 hours	70	7	19	4
35 + hours	56	2	35	7

Source: Thornthwaite (2002, 17) [derived from Glezer and Wolcott (1997, 3). Data is from the *Australian Family Life Course Survey* of 2000 respondents aged 25–50 years, conducted by Australian Institute of Family Studies, 1996.

- 7.5 More recent data shows that preference for part time employment appears to have remained, at least amongst low income families. A 2002 FACS study of 2,444 parents in low income households showed that a third of the parents were working. Mostly part time in jobs of less than 20 hours per week, and paying an average of \$13.000 per hour (Gregory, Ganley and Mustafa 2003).
- 7.6 Almost of these part time mothers were happy with their hours, although those that weren't wanted more hours to earn more money. Two thirds of those not working wanted to work, and two thirds of those preferred part time employment.
- 7.7 Part time work may be the only work parents can undertake. As Thornthwaite and others note the preferences are shaped by current reality. It is possible that the high demand of part time employment is, in part, a constrained choice. Part time work may not always be the type of work mothers want to do, it may be the only type of work mothers of pre-school children can do. HILDA data suggests that of all employees working part-time, care of a child is the most frequently cited reason, followed by undertaking study.
- 7.8 Working part time can ease the work-family spill-over. Glezer and Wollcott (1997) found that 47 per cent of fathers and 41 per cent of mothers working full time indicates work interfered with their family life. Half of full time lone mothers compared to 27 per cent of single mothers working part-time felt work interfered with their family life.
- 7.9 This is not surprising given the time use of mothers of pre-school children. Despite the relative respite as children get older, mothers of children under school age still have a very heavy unpaid workload. Craig's analysis indicates that the time spent in unpaid work is persistent whether or not the mother is employed, and whether or not childcare is used.

Figure 2 Unpaid work for men and women by age and number of children



7.10 The time use data shows that working mothers of preschool children cut back on housework, personal care and child-free leisure time. Craig reports that mothers of children under 5 working full time begin their days earlier and end them later than their counterparts with not in paid work (Craig 2003).

7.11 However a lot of the part time work in Australia is poor quality and far from family friendly. Most part time work is casual, with casual employees accounting for 60.4 percent of all part-time employees. Women are more likely than men to be employed casually, and mothers more likely than non-mothers. ABS Working Arrangements Survey data shows that over a third of employed mothers of children under 12 are employed on a casual basis. (ABS 2003).

7.12 Edith Gray (2001) examined attributes of the jobs held by childless men and women who indicated a desire to have children, and compared these to the attribute of jobs held by parents of children under 5 years of age. Using Negotiating the Life Course Survey data, she found that women lost access to sick leave, annual leave and carers leave on becoming a mother, while men in fact improved their likelihood of accessing these arrangements on becoming a father. Before women had a child, ninety per cent are entitled to paid sick

leave, 42 per cent report they can access paid maternity leave, and 57 per cent are entitled to family or carers' leave. Of employed women with a child under five, only 57 per cent report access to paid sick leave, 29 per cent are eligible for paid maternity leave and 38 per cent have access to family or carers' leave.

- 7.13 The ABS Working Arrangement Survey (ABS 2003) indicates that in addition to loss of pro rata leave entitlements, casual employees have less control over their start and finish times and less predictable schedules. The very attributes that employees with caring responsibilities need and desire; predictable schedules and leave to care cater for illness or lack of alternative care are much more prevalent amongst 38 hour week jobs, than amongst reduced hours jobs.
- 7.14 Reconciling work and family roles and addressing gender equity including a gradual return to work, requires decent, quality part time work.
- 7.15 A number of the comparable nations provide access to part time employment as part of the parental leave regime. Trieb and Falker (2004) report that:

“With regard to flexible forms of take-up, Germany adopted a rather far-reaching system that gives parents working in companies with more than 30 employees the legal right to work part-time during parental leave. Portugal went even further and guaranteed all employees a legal right to work part-time during parental leave (Interview P9: 792–796). Belgium endowed mothers and fathers working in companies with more than ten employees with a legal right to part-time leave. In addition, leave can also be taken in a piecemeal way and on the basis of a time-credit system provided that the employer agrees (Clauwaert/Harger 2000: 21). Finally, the already-mentioned possibility introduced in Austria and Germany to postpone part of the leave implies that the leave also can be taken in a piecemeal way. Furthermore, both countries created the possibility for mothers and fathers to take parts of the whole leave period alternately.” (page 10)

7.16 While in the UK there is no right to part time work, but the Flexible Working legislation provides a framework for requests to be considered. Part time work is the most commonly requested type of flexibility, and the most frequently granted.

7.17 The government must assist employees return to work after parental leave. In light of the strong preference for part time employment coupled with the care of pre-school children, employees returning from parental leave should have a guaranteed right to part time employment until their child reaches school age.

7.18 The AIRC should have clear powers to make awards that facilitate the employment of parents and carers in quality part time jobs.

Communication during parental leave

7.19 One of the less publicised claims made in the Work and Family Case was to improve the communication between employers and employees to facilitate parents' return to work after a period of parental leave. Both the ACTU and employers made very similar applications. The ACTU claim with respect to communication during parental leave provides that where an employee is on parental leave and a decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to make information available to the employee and provide the employee with an opportunity to discuss the changes. Employees would be subject to a similar obligation in respect of any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work, and whether the employee intends to return to work on a part time basis or full time basis.

7.20 Regular communication during parental leave provides for better and easier integration into the workforce on return to work. A failure to maintain communication during some absences can lead to circumstances such that a

return to work becomes problematic or, in extreme cases impossible, leaving both the employer and employee with unmet expectations.

- 7.21 Employer bodies have supported the obligation on employers to make information available, but opposed the obligation upon employers to provide an employee with the opportunity to discuss her or his return to work in light of the new information. Without discussion the provision of information is almost meaningless, and (the ACTU recommends that Schedule 14 of the WRA be amended to ensure meaningful communication between employees and employers during parental leave).

7.22 Employers of employees on parental leave should be obliged to communicate any changes to the employees status, responsibilities or working arrangements that would affect the employees return to work arrangements.

- 7.23 The ACTU recommends that Schedule 14 of the WRA be amended to ensure meaningful communication between employees and employers during parental leave.

8 Minimum Conditions of employment: Managing the ongoing care of dependents

Flexible working hours

- 8.1 Even more than leave, the ability to influence the number of, and arrangement in hours of work is the measure most valued by workers with regular, routine caring roles, including men. Flexible work arrangements allow employees, within certain parameters, to manage the length of the working day, working week or even working year. Flexible hours arrangements will encourage both parents to share the caring responsibilities. Men are more likely to use flexible work arrangements than any other family friendly provision (except some short periods of paid leave).

- 8.2 In Australia flexible working arrangements are much more likely to be utilised by the father than any other work arrangement. Bittman et al (2004) concluded from their case studies that men want to be more involved in their families and that while there has been some increase in formal flexibility at work, there was increasing pressure on men to work longer hours.
- 8.3 While such provisions are also likely to be used by working mothers, mothers also have a high utilisation rate of part-time work and work from home.

Families with at least one parent employed, work arrangement used June 2002

Work arrangement	Work arrangement used by father %	Work arrangement used by mother %
Flexible working hours	21.7	38.8
Permanent part-time work	2.9	34.9
Shift work	5.4	7.4
Work from home	9.1	18.2
Job sharing	0.5	4.2
Other	1.5	3.5
All families where arrangement use	30.0	70.4

Source: ABS, *Child Care, Australia*, June 2002, ABS Cat. No. 4402.0

- 8.4 Employees report difficulty in accessing flexible work arrangements. In a recent ABS survey *Managing employment and unpaid caring responsibilities* (ABS Cat. No. 4903.3, October 2002) conducted in Queensland, 39.2 per cent of employees who use work arrangements to care indicated they used flex-time, RDOs and time in lieu in such circumstances. At the same time 46.4 per cent of employees wanted to use flex-time RDOs and time in lieu to care but could not. The reason they were unable to use such arrangements is that, overwhelmingly, adequate arrangements did not exist for them to do so (41.6 per cent of employee cited not having adequate working arrangements).
- 8.5 Despite the benefit in assisting workers with caring responsibilities to meet their work and family commitments, flexible working arrangements are not widely available across Australian workplaces. While the government regularly claim that workplaces have become more flexible, its own data cannot confirm

that employees have benefited from this flexibility. The method of coding workplace agreements used by DEWR simply does not permit most clauses to be assessed as to the beneficiary of the clause.

- 8.6 While there may have been an increase in flexible hours of work, these have tended to be flexibility at the initiative of the employer, which is not conducive to meeting family responsibilities. A report by ACCIRT, the *Working time arrangements* report of 2001 provides evidence that flexible working is not necessarily available where it is most needed. The report looked at the text of agreements to discover that, although hours flexibility is commonly included in agreements, it is often flexibility at the initiative or direction of the employer. That is the flexibility is in response to the needs of the business, which is the anathema of family responsive working hours.

“...’averaging of hours’ provisions do not occur uniformly across all industries. These provisions are much more likely to occur in industries characterised by fluctuations in business and customer demand, and not as a response to worker demands for more family-friendly arrangements. The table shows that industries that require a high degree of flexibility in their rostering arrangements are more likely to use averaging of hours provisions...In contrast the female dominated industries of health, education and welfare – where it might be argued there is a greater demand for family-friendly provisions – have relatively low levels of averaging hours provisions” (emphasis added)

- 8.7 The ACIRRT report summarised the types of provisions that are included in agreements that alter working time arrangements. The ACIRRT report shows that many of the hours flexibility arrangements do not help workers with caring responsibilities but rather reflect the needs of employers. It found that:

- Agreement provisions to change working hours tend to reflect employer and workplace needs. ‘Business demand’, ‘customer demand’, ‘productivity improvements through reduced absenteeism’ are all common agreement terms used to rationalise changes in hours arrangements.

- The typical wage earner model characterised by an 8 hour day/5 day working week is becoming less prevalent – working time provisions in agreements also reflect this trend. Although most enterprise agreements make some reference to ‘working hours’, only a minority explicitly define the ‘ordinary hours’ to be worked in one week and these are sometimes extended by a requirement to work ‘reasonable overtime’. A wide range of ‘splintered’ provisions to maintain flexibility in working hours has been used in agreements.
- Paid ‘family-friendly’ provisions (carer’s leave, parental leave) are less common than other types of unpaid provisions that deliver hours flexibility (shift swapping, hours averaging). Agreement provisions that provide the employer with greater flexibility in hours arrangements appear to be more prevalent than changes that will directly benefit workers with family responsibilities.
- There are a number of provisions that have the potential to increase the aggregate amount of time spent at work, and reduce the amount of time available for leave and leisure. Incentives and bonus payments awarded to workers who do not use sick leave, and the introduction of performance targets and task-specific deadlines (rather than ordinary hours definitions) work to place the emphasis on the employee not the employer. With these provisions, more of the responsibility for the management of obligation associated with working time (eg. Recuperative breaks) is transferred to the employee and away from the employer.

8.8 The working of irregular and unpredictable hours has been associated with poorer outcomes in terms of family functioning and well-being. (Millward 2002, Evidence of Dr L Strazdins in AIRC Test Case proceedings). In recognition of this flexible work arrangements have been introduced in other jurisdictions. The Netherlands, Germany and the UK have each introduced flexible work arrangements for workers with caring roles. The experiences in the UK have

been very transparent and the subject of rigorous evaluation, and therefore are useful to this committee.

8.9 In response to the growing desire of parents for more flexible work practices, the UK Government established a Work and Parents Taskforce “*to consider how employers and working parents can be encouraged to adopt a constructive dialogue to find working patterns that suit them both.*” (DTI 2001)

8.10 Arising from this Taskforce Report flexible work was introduced through an amendment to the *Employment Relations Act 1999*. The UK provisions provide an employee with a right to request to apply to work flexibly and places a requirement on employer to seriously consider such a request and only allows for rejection of such a request on business grounds.

8.11 Evaluations of the scheme have been generally positive. *The Lovells CIPD report A parent’s right to ask – a review of flexible working arrangements* (Lovells 2003) assessed the impact of the legislation at that date. It found:

- strongly agreed that the new rights had had a positive effect on employee attitudes/morale (at page 351);
- 76 per cent of employers agreed or strongly agreed that the impact of the new rights had been negligible;
- employers were evenly divided on the question of whether the new rights led to business benefits between agreeing, disagreeing and not knowing; and
- 90 per cent of employers disagreed or strongly disagreed that they had significant problems complying with the legislation.

8.12 In the 24 months since the UK government introduced its flexible work legislation, 22 per cent of all parents of children under 6 have made a request for flexible work, and three quarters of these requests have been agreed to by

their employer. Of the small number (11 per cent) of requests that were refused, the most common reasons given by employers were an inability to reorganise work among existing staff, costs to business, and customer demand. Acceptance of requests was not affected by the size of the business. (DTI 2005a).

8.13 Seventy two per cent of the requests were made to accommodate child care problems. Part time employment, and flexitime requests were most common, followed by reduced hours for a short period, and the compressed working week. Importantly, temporary employees were as likely as permanent employees to make a request. The impost on business is small, with eight in ten requests being dealt with verbally. An employer survey suggested only 8 per cent of requests are rejected. (DTI2005b)

8.14 The success of the UK legislation has led the UK government to propose extending eligibility to all carers, or to parents of older aged children. A regulatory impact statement assessing both options has been released for public comment. (DTI 2005b). In light of experience with the legislation the RIA has reduced the expected cost to business per claim significantly, and the government calculate a net saving to the economy if the provisions are extended to all parents, while there is a small net cost for the extension to all carers .

8.15 The government should legislate to provide that employers of employees with caring responsibilities are obliged to provide flexible hours of work, and access to periods of unpaid leave

8.16 The government should consider the UK Flexible Work for Parents legislation as a model that could be adapted to meet Australian circumstances.

Planned leave

- 8.17 Employees with school aged children need alternatives to vacation care. Workers may need to provide respite to another family member who is the primary carer for a severely disabled person. An employee may need to care for frail and older relatives after surgery, or to provide palliative care to the very ill. These demands on employees time can be characterized as foreseeable demands for a block of leave of a one- off, or periodic nature.
- 8.18 Long service leave or even annual leave are not available to employees of short duration, or employees working in industries which enforce a shut down each year. Even with two parents annual leave doesn't cover 12 weeks of annual leave does not cover the school holidays; sole parents annual leave is clearly inadequate.
- 8.19 Although some awards provide for unpaid leave at the discretion of the employer, a right to such leave is generally not available pursuant to Australia's award system. Indeed the government has argued that leave of this nature is not an allowable award matter. Planned family leave is not common in agreements either, although clauses with 48/52s (or similar) are common in public sector workplaces and increasingly across the private sector.
- 8.20 The ACTU has made application to insert into awards a right to request up to 6 weeks additional unpaid leave per annum, with a further right to request that wages be averaged across the year to avoid a long period without income.
- 8.21 Term time work is available under flexible working arrangements in some nations, and parental leave can be used in until the child is eight. The United Kingdom has a limited form of this scheme whereby parents of pre-school children can take 13 weeks per child before the child is 6, (or older for children with a disability) with the usual maximum being 4 weeks in any year. That is, in addition to 12 months maternity leave, the UK has legislated for 26 weeks per family to be taken while children are young.

8.22 The WRA should provide a clear power for the AIRC to insert in to awards planned leave for family care purposes, including term-time work.

Unplanned leave

8.23 Since the 1995 Personal/Carers' Leave Test Case most federal awards provide that workers can access 5 days of their personal leave to provide care to a sick family member. The leave is paid. However, research suggests that carers' leave is most likely to be available to employees least likely to take the leave. Thirty five per cent of mothers of children under aged 12 have no carers leave because they are casual. A quarter of women have been in their jobs for less than 12 months, and would have small or no sick/personal leave accumulation. .

8.24 In the course of the Work and Family Test Case, agreement was reached between the ACTU, the Australian Industry Group and the Australian Chamber of Commerce and Industry to modify the personal and carers' leave provisions in awards to provide employees greater access to their personal sick leave to care for their dependants. The Commonwealth has indicated its support for the agreement.

8.25 The agreement provides for most employees covered by a federal award to access 10 days paid leave for caring purposes each year, and further unpaid leave up to two days on each occasion of an illness or other unexpected circumstance. Whether an individual employee has access to ten days paid leave depends upon the quantum of personal sick leave specified in each award, the quantum of personal sick leave that has been accumulated by the employee and whether the employee has taken significant amounts of personal sick leave. It was also agreed that casual employees should be able to take time away from work to attend to specified family matters without penalty.

8.26 While an improvement upon the existing scheme, people starting work, or returning to employment after time off to care will have no accumulated leave.

Parents returning to work after parental leave, especially those placing children in childcare for the first time, may find the quantum of leave inadequate. This is most likely to affect women.

8.27 The government should legislate to extend personal/carers leave to all employees, including employees not covered by awards. The purpose of personal/carers leave should include all unexpected circumstances where the dependent requires care, including but not limited to the care of sick dependants.

8.28 The ACTU recommendation for a legislated carers leave safety net not dependant upon prior service would assist parents and carers returning to employment, and ensure that carers leave was available to those most likely to need to take the leave.

9 Conclusion

9.1 There is no shortage of good ideas and best practice that will assist employees meet their caring roles. Effective work and family balance will depend upon a labour market that provides employees with a sense of security in the jobs and their incomes, the provisions of high quality, affordable childcare, and intervention to make sure that our workplaces are responsive to the needs of caring workers. Overseas experience shows that competitiveness need not be compromised while enhancing parents and carers choices. The long term health of our children and of our economy demand a full response, the ACTU commends its recommendations to the Committee.